

(b) Agencies may authorize management and operating contracts only in a manner consistent with the guidance of this subpart and only if they are consistent with the situations described in 17.604.

(c) Within 2 years of the effective date of this regulation, agencies shall review their current contractual arrangements in the light of the guidance of this subpart, in order to (1) identify, modify as necessary, and authorize management and operating contracts and (2) modify as necessary or terminate contracts not so identified and authorized, except that any contract with less than 4 years remaining as of the effective date of this regulation need not be terminated, nor need it be identified, modified, or authorized unless it is renewed or its terms are substantially renegotiated.

[48 FR 42163, Sept. 19, 1983, as amended at 50 FR 52434, Dec. 23, 1985]

17.603 Limitations.

(a) Management and operating contracts shall not be authorized for—

(1) Functions involving the direction, supervision, or control of Government personnel, except for supervision incidental to training;

(2) Functions involving the exercise of police or regulatory powers in the name of the Government, other than guard or plant protection services;

(3) Functions of determining basic Government policies;

(4) Day-to-day staff or management functions of the agency or of any of its elements; or

(5) Functions that can more properly be accomplished in accordance with Subpart 45.3, Authorizing the Use and Rental of Government Property.

(b) Since issuance of an authorization under 17.602(a) is deemed sufficient proof of compliance with paragraph (a) immediately above, nothing in paragraph (a) immediately above shall affect the validity or legality of such an authorization.

(c) For use of project labor agreements, see subpart 22.5.

[61 FR 39204, July 26, 1996, as amended at 66 FR 27415, May 16, 2001; 72 FR 27384, May 15, 2007; 74 FR 34207, July 14, 2009; 75 FR 19177, Apr. 13, 2010]

17.604 Identifying management and operating contracts.

A management and operating contract is characterized both by its purpose (see 17.601) and by the special relationship it creates between Government and contractor. The following criteria can generally be applied in identifying management and operating contracts:

(a) Government-owned or -controlled facilities must be utilized; for instance, (1) in the interest of national defense or mobilization readiness, (2) to perform the agency's mission adequately, or (3) because private enterprise is unable or unwilling to use its own facilities for the work.

(b) Because of the nature of the work, or because it is to be performed in Government facilities, the Government must maintain a special, close relationship with the contractor and the contractor's personnel in various important areas (e.g., safety, security, cost control, site conditions).

(c) The conduct of the work is wholly or at least substantially separate from the contractor's other business, if any.

(d) The work is closely related to the agency's mission and is of a long-term or continuing nature, and there is a need (1) to ensure its continuity and (2) for special protection covering the orderly transition of personnel and work in the event of a change in contractors.

17.605 Award, renewal, and extension.

(a) Effective work performance under management and operating contracts usually involves high levels of expertise and continuity of operations and personnel. Because of program requirements and the unusual (sometimes unique) nature of the work performed under management and operating contracts, the Government is often limited in its ability to effect competition or to replace a contractor. Therefore contracting officers should take extraordinary steps before award to assure themselves that the prospective contractor's technical and managerial capacity are sufficient, that organizational conflicts of interest are adequately covered, and that the contract will grant the Government broad and continuing rights to involve itself, if necessary, in technical and managerial

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decisionmaking concerning performance.

(b) The contracting officer shall review each management and operating contract, following agency procedures, at appropriate intervals and at least once every 5 years. The review should determine whether meaningful improvement in performance or cost might reasonably be achieved. Any extension or renewal of an operating and management contract must be authorized at a level within the agency no lower than the level at which the original contract was authorized in accordance with 17.602(a).

(c) Replacement of an incumbent contractor is usually based largely upon expectation of meaningful improvement in performance or cost. Therefore, when reviewing contractor performance, contracting officers should consider—

(1) The incumbent contractor's overall performance, including, specifically, technical, administrative, and cost performance;

(2) The potential impact of a change in contractors on program needs, including safety, national defense, and mobilization considerations; and

(3) Whether it is likely that qualified offerors will compete for the contract.

Subpart 17.7—Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense

SOURCE: 77 FR 69722, Nov. 20, 2012, unless otherwise noted.

17.700 Scope of subpart.

(a) Compliance with this subpart is in addition to the policies and procedures for interagency acquisitions set forth in subpart 17.5. This subpart prescribes policies and procedures specific to acquisitions of supplies and services by nondefense agencies on behalf of the Department of Defense (DoD).

(b) This subpart implements Public Law 110-181, section 801, as amended (10 U.S.C. 2304 Note).

17.701 Definitions.

As used in this subpart—

48 CFR Ch. 1 (10-1-13 Edition)

Department of Defense (DoD) acquisition official means—

(1) A DoD contracting officer; or

(2) Any other DoD official authorized to approve a direct acquisition or an assisted acquisition on behalf of DoD.

Nondefense agency means any department or agency of the Federal Government other than the Department of Defense.

Nondefense agency that is an element of the intelligence community means the agencies identified in 50 U.S.C. 401a(4), which include the—

(1) Office of the Director of National Intelligence;

(2) Central Intelligence Agency;

(3) Intelligence elements of the Federal Bureau of Investigation, Department of Energy, and Drug Enforcement Agency;

(4) Bureau of Intelligence and Research of the Department of State;

(5) Office of Intelligence and Analysis of the Department of the Treasury;

(6) The Office of Intelligence and Analysis of the Department of Homeland Security and the Office of Intelligence of the Coast Guard; and

(7) Such other elements of any department or agency as have been designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.

17.702 Applicability.

This subpart applies to all acquisitions made by nondefense agencies on behalf of DoD. It does not apply to contracts entered into by a nondefense agency that is an element of the intelligence community for the performance of a joint program conducted to meet the needs of DoD and the nondefense agency.

17.703 Policy.

(a) A DoD acquisition official may request a nondefense agency to conduct an acquisition on behalf of DoD in excess of the simplified acquisition threshold *only if* the head of the nondefense agency conducting the acquisition on DoD's behalf has certified that the agency will comply with applicable